

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

United States of America,

Plaintiff

v.

204.51 acres of land, more or
less, in the County of Wayne,
State of Utah, Richard W.
Smyth, et al.,

Defendants

In the matter of the acquisition
by the United States of America
of certain parcels of land situate,
lying and being in the County of
Wayne, State of Utah, for use in
connection with the Capitol Reef
National Monument of the National
Park Service of the Department of
the Interior.

Civil No. C-95-61

Filed in United States District
Court, District of Utah.

Time: JUN 2 1961

W. Wayne Christensen
Clerk

DECLARATION OF TAKING

Pursuant to the authority delegated on February 17, 1959, by the Secretary of the Interior under subparagraphs (6) and (7) of 200.2.2 Departmental Manual of the Department of the Interior (24 F. R. 1511), to the Solicitor of the Department of the Interior, I do hereby make and cause to be filed this Declaration of Taking under and in accordance with the act of Congress approved February 26, 1951 (46 Stat. 1461; 40 U.S.C., sec. 258a), and acts supplementary thereto and amendatory thereof, and declare that:

FIRST: (a) The lands shown on the exhibits attached hereto are taken pursuant to and under authority of the Department of the Interior and Related Agencies Appropriation Act, 1961 (74 Stat. 104), which makes funds available for such purposes.

(b) The lands described in the exhibits have been selected by me for acquisition by the United States for use in connection with the development of the Capitol Reef National Monument, administered by the National Park Service of the Department of the Interior, and are required for immediate use.

(c) In my opinion it is necessary, advantageous, and in the interest of the United States that said lands be acquired by judicial proceedings as authorized by the act of August 1, 1888 (25 Stat. 357; 40 U.S.C., sec. 257).

(d) The public use for which such lands are taken is as follows:

The lands are needed for road construction and for national monument purposes for the benefit and enjoyment by the visiting public.

SECOND: Pursuant to law, I have selected for acquisition for the purposes of the acts of Congress cited above certain lands and premises located in the County of Wayne, State of Utah, described in Exhibits I through V and shown on plats marked Exhibits "A" through "E", respectively, which are annexed hereto, in the attached pocket, and made a part hereof as follows:

<u>Tract No.</u>	<u>Description</u>	<u>Plat</u>
3	Exhibit I	"A"
8	Exhibit II	"B"
9	Exhibit III	"C"
10	Exhibit IV	"D"
7	Exhibit V	"E"

aggregating 284.31 acres of land, more or less.

Together with all and singular the water rights and other rights, tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining.

THIRD: The estate taken for such public use is the full fee simple title in and to the said lands, subject to existing roads and easements for sewer, gas and water pipe lines, and other public utilities, if any.

FOURTH: The total sum estimated by me as just compensation for the lands taken hereunder is One hundred thirty thousand, eight hundred fifty dollars (\$130,850), which sum I hereby deposit in the Registry of

the Court for the use and benefit of the parties entitled thereto as follows:

Tract 3	Ostensible Owners: Sprang, Richard W. and Elizabeth (nee Lewis) the sum of \$77,500
Tract 8 (part)	Ostensible Owners: Brimhall, Dean R. and Lila Eccles the sum of \$6,500
Tract 9	Ostensible Owners: Krueger, Max L. and Aliene the sum of \$29,850
Tract 10	Ostensible Owner: Utah Wonderland Stages, Inc. the sum of \$5,000
Tract 7	Ostensible Owners: Smith, Merin and Cora the sum of \$12,000

Total sum - \$130,850.

I am of the opinion that the ultimate award for said lands will probably be within the limits of allocations and allotments made and provided for the purpose of acquiring same.

IN WITNESS WHEREOF, I have signed this Declaration of Taking in the City of Washington, District of Columbia, this 22nd day of May, 1961.

/s/ FRANK J. DARRY
Solicitor of the Department
of the Interior of the
United States of America

Beginning at the Northwest corner of the Northwest quarter of the Southeast quarter (NW⁴SE⁴) the point of beginning; Thence East 28 rods, thence South 40 rods, thence West 28 rods, thence North 40 rods to place of beginning containing 7.0 acres more or less; reserving to the husband, Dean R. Brimhall, a life estate in a portion of Parcel No. 2 described as follows: Beginning at a point 330 feet south of the Northwest corner of the Northwest quarter of the Southeast quarter (NW⁴SE⁴) of Section 15, T. 29 S., R. 6 E., SLM: thence east to the center of Sulphur Creek, thence following the Center thread of Sulphur Creek in a general Southeasterly direction to a point on the south boundary line of Parcel No. 2, thence west to the Southwest corner of Parcel No. 2, thence North 330 feet to point of beginning.

Together with water rights described as follows:

Sixteen hundredths (.16) cubic feet per second (c.f.s.) of the water of the Fremont River comprising a part of the .44 c.f.s. conveyed to Seller by that certain deed from Clarence and Marie Mulford, et al. dated June 16, 1945 and recorded June 18, 1945 in Book G of Deeds, page 394, Records of Wayne County, Utah.

DESCRIPTION - BRIMHALL PROPERTY

Capitol Reef National Monument

Owned by

Dean R. Brimhall and Lila Eccles Brimhall, husband and wife

of

Wayne County, Utah

Salt Lake Meridian, Wayne County, Utah

Township Twenty-nine (29) South, Range Six (6) East

Section 15, consisting of Parcels Nos. 1 and 2.

Detailed description as follows:

PARCEL NO. 1

The North half of the North half of the Northeast quarter of the Southwest Quarter ($N^2N^2NE^4SW^4$) of Section 15, Township 29 S., Range 6 E., Salt Lake Meridian, except the land conveyed by Dean R. Brimhall and Lila Eccles Brimhall to the State Road Commission of Utah by that certain warranty deed, dated August 14, 1956 and recorded September 17, 1956 in Book J of Deeds, Page 138, of records, Wayne County, Utah, and containing approximately 10 acres more or less.

PARCEL NO. 2

A portion of the Westerly part of the Northwest quarter Southeast quarter (NW^4SE^4) of Section 15, T. 29 S., R. 6 E., described as follows:

EXHIBIT-

And together with all of the seller's interest in diligence water rights from Sand Creek also known as Sulphur Creek and more particularly described in that certain affidavit of Aaron E. Holt dated June 14, 1945, and recorded June 16, 1945 in Book G of Deeds, page 393, Wayne County Records.